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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JOHN W. SHOEMAKER, Chief,
Ohio Adult Parole Authority,

Petitioner,

v.

JOSEPH RILEY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DOES STONE V. POWELL, 428 U.S. 465 (1980) PERMIT FEDERAL HABEAS CORPUS REVIEW OF A FOURTH AMENDMENT CLAIM SIMPLY BECAUSE THE FEDERAL COURT BELIEVES THE STATE COURTS ERRED IN THAT PARTICULAR CASE?

II. SHOULD THERE BE A GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE WHERE LAW ENFORCEMENT OFFICERS, WHO HAVE SUFFICIENT PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT, CONDUCT A CONSENSUAL SEARCH ACTING UPON AN OBJECTIVE GOOD FAITH BELIEF THAT THE PERSON CONSENTING TO THE SEARCH HAS ACTUAL AUTHORITY TO CONSENT?

PARTIES

The petitioner in this action is John W. Shoemaker in his capacity as Chief of the Ohio Adult Parole Authority. The respondent is Joseph Riley.

STATUS OF PARTIES

At the time of the lower court action the respondent Joseph Riley was in the custody of Frank H. Gray, Superintendent of the Ohio State Reformatory. Subsequently respondent was granted a parole and came into the constructive custody of petitioner John W. Shoemaker.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit is reported as **Riley v. Gray**, 674 F.2d 521 (6th Cir. 1982) (A-1). The decision of the United States District Court for the Northern District of Ohio, Eastern Division is unreported. (A-26). The decision of the Ohio Court of Appeals, Third Judicial District is unreported. (A-31).

JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit was entered March 22, 1982. Jurisdiction is conferred by 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The case involves Amendment IV to the Constitution of the United States:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The case also involves Section 1 of Amendment XIV to the Constitution of the United States:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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OCTOBER TERM, 1981

JOHN W. SHOEMAKER, Chief,
Ohio Adult Parole Authority,

Petitioner,

v.

JOSEPH RILEY,

Respondent.

STATEMENT OF THE CASE

Respondent, Joseph Riley, was indicted by the September, 1976 Term of the Paulding County, Ohio, Grand Jury for aggravated trafficking, trafficking in marijuana, drug abuse (3 counts), possession of dangerous ordnance, carrying a concealed weapon, kidnapping and aggravated menacing in violation of Ohio Revised Code Sections 2925.03(A)(6); 2925.11(a), 2923.17, 2923.12, 2905.01 and 2903.21, respectively. Respondent, while represented by counsel, was tried to a jury and found guilty of aggravated trafficking in drugs, trafficking in marijuana and drug abuse and was sentenced to terms of four (4) to fifteen (15), three (3) to ten (10) and two (2) to five (5) years imprisonment. The other charges in the indictment were dismissed pursuant to the State's motion prior to trial.

Before trial, respondent filed a motion to suppress certain items which had been seized pursuant to a search

warrant. The hearing on the motion to suppress revealed that on September 29, 1976, police officers from the Paulding Village Police Department arrived at a tavern known as the Red Owl Bar in response to a report of a shooting. Officer Walter Heinrichs, arriving at the Red Owl, saw respondent lying in the doorway of the tavern bleeding from a gunshot wound. Another man who was tending to respondent indicated that the man who had shot respondent was in the tavern restroom.

Heinrichs went to the restroom where he found James Christian who was vomiting into the toilet.

Christian explained to Heinrichs that he had accidentally shot respondent, at which point Heinrichs asked to see the gun that Christian had used. Christian led Heinrichs to a second floor apartment located over the tavern, produced the keys to the apartment and attempted to open the door. Christian was shaking too hard to open the door and handed the keys to Officer Heinrichs who unlocked the door and took about two steps into the apartment where he could observe a revolver lying on the kitchen table. After looking quickly around the apartment Heinrichs left, locking the door and keeping the keys.

Shortly thereafter, Chief of Police Charles Watson arrived as did Deputy Dave Harrow of the Paulding County Sheriff's Department. Heinrichs, Watson and Harrow returned to the apartment with Christian. Christian explained again that the shooting had been accidental while he and respondent were "tussling." Christian pointed out where he and respondent had been standing and demonstrated how the shooting had occured. The officers observed the weapon on the kitchen table and blood on the floor. Chief Watson, in Christian's

presence, asked Deputy Harrow to "process the scene" i.e. take photographs and collect the physical evidence. At that time Christian and Watson left, going to the Sheriff's Department. Christian indicated that he did not want to make any further statements until he had spoken to an attorney.

Respondent, Joseph Riley, who was seriously wounded, had been removed by ambulance to a hospital before Chief Watson and Deputy Harrow arrived at the tavern.

Harrow, while collecting evidence, noticed what appeared to be a bullet hole in the wall between the kitchen and bedroom. He entered the bedroom in an effort to trace the bullet's trajectory. He then observed bags of marijuana, other drugs, and drug paraphenalia lying on the top of a dresser. He also observed other firearms. Harrow phoned the prosecutor and it was decided that a search warrant would be sought for a thorough search of the premises. It was while the search warrant was being prepared that the officers involved first learned that the apartment to which Christian had led them was rented to respondent, Joseph Riley. Items seized pursuant to the warrant resulted in the charges against Riley.

At the hearing on the motion to suppress the police officers testified that at the time Christian led them to the apartment they had no knowledge that it was respondent's apartment. They also denied that respondent was the subject of any investigation at the time they initially entered the apartment.

Neither respondent nor Christian testified at the suppression hearing in the Ohio Court of Common Pleas.

The state trial court overruled the motion to suppress finding that Christian had consented to the observation of the apartment. The court held:

> Consequently, the court finds that Officer Harrow had a right to be where he was when observing in plain view objects referred to in his search warrant testimony.

It should be noted that there was no evidence introduced at the suppression hearing that, contrary to all reasonable inferences, Christian had not had actual authority to consent to the initial observations of the apartment.

Respondent pursued a direct appeal to the Ohio Court of Appeals, Third District, asserting *inter alia:*

> Denial of defendant-appellant's motion to suppress constituted prejudicial error since the warrant for the search of the defendant-appellant's house was not obtained until after police had entered and searched the premises in violation of the defendant-appellant's rights under the fourth and fourteenth amendments to the United States Constitution.

The appellate court devoted some five (5) pages of its opinion to a consideration of respondent's Fourth Amendment claim. The Court of Appeals held that Riley had failed to establish the requisite standing to object to the search. The court went on to state:

> We find this independently of the possibility of the legality of the search due to the consent of Christian who exercised some

dominion over the apartment. *See* **Frazier v. Cupp, 394 U.S. 731, 89 S. Ct. 1420.** (A-34).

Respondent's ensuing motion for leave to appeal was overruled by the Supreme Court of Ohio.

Respondent thereafter filed a petition for writ of habeas corpus with the United States District Court for the Northern District of Ohio, Western Division. Petitioner filed a return of writ arguing that as respondent was afforded a full pretrial evidentiary hearing by the Common Pleas Court on his suppression motion, and as that judgment was reviewed and affirmed by the Court of Appeals, consideration of the Fourth Amendment claim was barred by the doctrine of **Stone v. Powell, 428 U.S. 465 (1976).** On January 9, 1980, the magistrate issued a memorandum and order holding that **Stone v. Powell,** *supra,* did not bar consideration of respondent's Fourth Amendment claim because the state appellate court had erroneously determined the "standing" issue. (A-14). Petitioner thereafter filed a memorandum contra the magistrate's report disputing the analysis which the magistrate had attributed to the Stone decision.

On August 12, 1980, an evidentiary hearing was held before the district court. It was at this hearing that respondent and James Christian testified for the first time in the history of the case. This was also the first time that any evidence was heard that tended to show that, contrary to the reasonable conclusions to be drawn from Christian's actions on the night of the shooting, Christian had no actual authority to consent to a search of the apartment.

Watson, Heinrichs and Harrow also testified in the district court. They again testified that at the time

Christian led them to the apartment, produced the keys and explained the shooting, they had not known that this was respondent's apartment rather than Christian's.

On September 5, 1980, the district court issued an opinion and order rejecting respondent's Fourth Amendment claim. The district court apparently based its decision on the existence of probable cause to search. Significantly, the court also observed that the initial entry by the police was made ". . . acting on the apparent though non-existent authority of Christian to permit, ..." (A-24).

Respondent filed a timely motion for relief from judgment pursuant to Rule 60(b)(1) and (6), and Rule 59(e) of the Federal Rules of Civil Procedure. In an opinion and order filed January 22, 1981, the district court granted the motion and granted habeas corpus relief. (A-26). Clarifying the facts, the court held that while the first entry by officer Heinrichs was justified as an emergency exception to the warrant requirement, the later warrantless entries could not be justified by exigent circumstances.

The court also rejected consent by Christian based on Christian's apparent authority. While finding that apparent authority "may have appeared" the court held that actual authority was required.

> The only other justification advanced by defendant for the warrantless search is that Mr. Christian consented to the search. It was clear from the hearing that although Mr. Christian may have appeared to have had authority to permit entry because he had possession of the

> keys, he had no actual authority. Therefore, the warrantless search cannot be justified on the basis of consent. **United States v. Matlock**, 415 U.S. 164 (1974); **United States v. Cook**, 530 F.2d 145 (7th Cir. 1979). (A-30).

Petitioner appealed from the judgment granting habeas corpus relief to the United States Court of Appeals for the Sixth Circuit arguing that **Stone v. Powell**, *supra*, bars habeas corpus review of the respondent's Fourth Amendment claim and that the purpose of the exclusionary rule would not be served by the suppression of the evidence seized in this case, because the officers had a reasonable, objective good faith belief that Christian had authority to consent to the search and that the search was lawful. The Court of Appeals affirmed the district court judgment on March 22, 1982. (A-1). The court of appeals properly noted a division of authority in the various cricuit courts as to both the **Stone v. Powell**, *supra* question and the issue of whether there exists a good faith exception to the Fourth Amendment.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

I.

DOES STONE V. POWELL, 428 U.S. 465 (1980) PERMIT FEDERAL HABEAS CORPUS REVIEW OF A FOURTH AMENDMENT CLAIM SIMPLY BECAUSE THE FEDERAL COURT BELIEVES THE STATE COURTS ERRED IN THAT PARTICULAR CASE?

This petition raises important questions of national interest. The United States Court of Appeals for the Sixth Circuit has, by the decision below, placed itself in direct conflict with the United States Court of Appeals for the Fifth Circuit and has made this Court's decision in **Stone v. Powell**, 428 U.S. 465 (1976) little more than a hollow shell if not an outright nullity.

In **Stone v. Powell** this Court held:

> [W]here the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. In this context the contribution of the exclusionary rule, if any, to the effectuation of the Fourth Amendment is minimal and the substantial societal costs of application of the rule persist with special force. 428 U.S. 494-495 (footnotes omitted)

Notwithstanding this unequivocal mandate, the Sixth Circuit, by the decision below, has created a precedent which would permit federal courts to continue reviewing Fourth Amendment claims in the prohibited context and granting relief where they believe the state courts have erred in the application of the exclusionary rule despite the fact that the state provides a clearly adequate opportunity to fully and fairly litigate Fourth Amendment claims.

The Sixth Circuit's error resulted from that court's failure to take any cognizance of the character and purpose of the exclusionary rule as developed in this Court's prior decisions and fully explained in **Stone v. Powell.** As this Court summarized:

> The primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment rights. Post-Mapp decisions have established that the rule is not a personal constitutional right. It is not calculated to redress the injury to the privacy of the victim of the search or seizure, for any "[r]eparation comes too late." . . . But despite the broad deterrent purpose of the exclusionary rule, it has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons. As in the case of any remedial device, "the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." 428 U.S. 486-487 (citations omitted).

The decision in **Stone v. Powell** contemplated a bar to habeas corpus review where a state provides an efficacious remedy to litigate these Fourth Amendment claims; the decision did not contemplate that the state must provide a remedy that could never err nor that review would be barred only where a federal court believes that the state court has reached the "correct" result.

The Sixth Circuit examined Ohio's mechanism for the resolution of the Fourth Amendment claims and found it "clearly adequate" (A-7). There is no suggestion that the Ohio courts in applying this mechanism lack the appropriate sensitivity to constitutional rights nor that those courts lack the expertise to apply federal constitutional law. There is no suggestion that the Ohio courts do not generally reach the correct result in applying the exclusionary rule thereby creating a deterrent to future unlawful police conduct. The only finding the Sixth Circuit made was that in respondent's case the state courts committed an "understandable" error.

The Fifth Circuit's application of **Stone v. Powell** is in direct conflict with the Sixth Circuit's. The test applied by the Fifth Circuit was developed in a series of decisions culminating with **Williams v. Brown**, 609 F.2d 216, 220 (5th Cir. 1980):

> In **Caver v. Alabama**, 577 F.2d 1188 (5th Cir. 1978), this court observed that it is the existence of state processes allowing an opportunity for full and fair litigation of fourth amendment claims, rather than a defendant's use of those processes, that serves the policies underlying the exclusionary rule and bars federal habeas corpus consideration of claims under **Stone v. Powell**. *Id.* at

1192-93. In **Caver**, we held that, "if state procedures afford the defendant in a criminal case the opportunity to [fully and fairly] litigate whether evidence obtained in violation of the fourth amendment should be excluded . . . then **Stone v. Powell** precludes federal habeas corpus consideration of those issues whether or not the defendant avails himself of that opportunity." *Id.* at 1193.

Moreover, subsequent to **Caver** this court held that the bar of **Stone v. Powell** still applies despite a state court error in deciding the merits of a defendant's fourth amendment claim. **Swicegood v. Alabama**, 577 F.2d 1322, 1324-25 (5th Cir. 1978). Here, however, the state court mistake occurred not when deciding the merits of the fourth amendment claim, but in ruling on whether the claim had already been presented. This error prevented the state habeas corpus court from considering the merits of Williams' fourth amendment claim. Nevertheless, in the absence of allegations that the processes provided by a state to fully and fairly litigate fourth amendment claims are routinely or systematically applied in such a way as to prevent the actual litigation of fourth amendment claims on their merits, the rationale of **Caver** dictates that **Swicegood's** application of **Stone**

> despite a mistake in adjudicating the merits must apply with equal force to procedural mistakes that thwart the presentation of fourth amendment claims. Accordingly, we find that the district court correctly dismissed petitioner's fourth amendment claims as being barred by **Stone v. Powell.**

Petitioner submits that the Fifth Circuit's application of **Stone v. Powell** is the correct one.

If the Sixth Circuit's decision is allowed to stand, that court, and undoubtedly others, will continue to treat the suppression of evidence not as the awesome social cost attendent to the deterrent effect of the exclusionary rule, but rather as a constitutional requisite it was never intended to be. That court will continue to exact these "substantial societal costs" at a time when the contribution, if any, is "minimal."

The petition should be granted to eliminate the conflict between the Circuits and to guarantee the continued vitality of **Stone v. Powell.**

II.

SHOULD THERE BE A GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE WHERE LAW ENFORCEMENT OFFICERS, WHO HAVE SUFFICIENT PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT, CONDUCT A CONSENSUAL SEARCH ACTING UPON AN OBJECTIVE GOOD FAITH BELIEF THAT THE PERSON CONSENTING TO THE SEARCH HAS ACTUAL AUTHORITY TO CONSENT?

The instant case presents an important issue of constitutional law regarding the scope of the exclusionary rule as fashioned by this Court in **Weeks v. United States**, 232 U.S. 383 (1914) and thereafter made applicable to the states in **Mapp v. Ohio**, 367 U.S. 643 (1961).

It is now well settled that the exclusionary rule is not coextensive with the Fourth Amendment nor otherwise compelled by the Constitution. *See* e.g., **Stone v. Powell**, 428 U.S. 465 (1976); **United States v. Calandra**, 414 U.S. 338 (1974). Rather, the exclusionary doctrine is a judge-made rule crafted to enforce Fourth Amendment requirements. The rule has been characterized by this Court as a mere "remedial device." **United States v. Calandra**, *supra*, at 348. The sole purpose of the exclusionary rule is that it seeks to deter future police misconduct and thereby secure the proscriptions of the Fourth Amendment to the Bill of Rights.

The exclusionary rule exacts a heavy toll on law enforcement and, concomitantly, from society as a whole. The rule inevitably operates to suppress reliable and probative evidence from reception by the trier of fact and, when invoked, most often results in a patently guilty offender escaping societal sanction. In point of fact, the rule can only aid the guilty, i.e., if the unconstitutional intrusion results in the discovery of no wrongdoing, there is simply nothing to "suppress." While the exclusionary rule can only operate to exculpate the guilty with respect to an individual case, its justification lies in the stated purpose that it acts as a deterrent against "future police misconduct."

Both federal and state authorities, through their respective courts and legislative bodies are currently in the process of reconciling the inherent conflict of the

exclusionary rule and are uniformly arriving at a consensus view toward harmony with the right of persons to be secure in their effects and property and the enigma of freeing only the guilty. The consensus view thus far obtained is a good-faith exception to the exclusionary rule. It is precisely this consensus by courts, legislatures, and commentators alike which makes the herein case one of national importance.

The good faith exception to the exclusionary rule is hardly an emerging or embryonic concept. Indeed, the Arizona legislature only recently [April 20, 1982] enacted a model law which allows for such an exception.[1]

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1. Arizona Revised Statutes, Section 1, Title 13, Chapter 38, Article 8 now provides as follows:

> 13-3925. Admissibility of evidence obtained as a result of unlawful search or seizure.
>
> A. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.
>
> B. The trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.
>
> C. In this section:
>
> 1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.

(footnote contd.)

Congress has before it similar legislation. [S. 2231 (introduced May 18, 1982)]. To like effect, the federal and state judiciary have perceived the need to reconcile the stated purpose of the exclusionary rule with police conduct which, only in detached retrospection, constitutes a violation of the Fourth Amendment. *See* e.g., **United States v. Williams**, 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981); **People v. Adams**, 53 N.Y. 2d 241, 423 N.E. 2d 379 (1981). *See also*, **Robberson Steel Co. v. O.S.H.A.**, 645 F.2d 22 (10th Cir. 1980); **United States v. Wilson**, 528 F. Supp. 1129 (S.D. Fla. 1982).

The chilling effect upon both courts and legislatures is the perceived and perhaps real fear that their efforts to arrive at a reasoned assessment of what the exclusionary

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2. "Technical violation" means a reasonable good faith reliance upon:

(a) A statute which is subsequently ruled unconstitutional.

(b) A warrant which is later invalidated due to a good faith mistake.

(c) A controlling court precedent which is later overruled, unless the court overruling the precedent orders the new precedent to be applied retroactively.

D. This Section shall not be construed to limit the enforcement of any appropriate civil remedy or criminal sanction in actions pursuant to other provisions of law against any individual or government entity found to have conducted an unreasonable search or seizure.

E. This section does not apply to unlawful electronic eavesdropping or wiretapping.

rule commands will ultimately be annulled by this Court. While the conflict in the federal circuits should in and of itself command this Court's review, this greater threat to federal and state innovation most assuredly warrants plenary review by this Court. Denial of review by this Court can only result in a stagnation of efforts to arrive at a reasoned accommodation to those core Fourth Amendment values which must remain inviolate and the types of mandated exclusionary rule decisions which unnecessarily impede respect for the courts by blithely allowing the guilty to remain free.

The undisputed factual scenario presented by the instant case is precisely that which the deterrence foundation of the exclusionary cannot accommodate.

Officer Heinrichs was summoned to the rural community tavern in response to a call that a man had been shot. After ascertaining that the victim [the respondent] would receive emergency medical aid, he placed the assailant [Christian] under arrest. The following uncontroverted events then ensued: (1) Christian led the officer up to the upstairs apartment; (2) Christian produced the keys to a locked apartment; (3) Christian endeavored to open the door but was shaking too much; (4) Christian gave the keys to Heinrichs; (5) Heinrichs opened the door, saw the weapon, and secured the area; (6) another officer arrived, the door was again opened and Christian "re-enacted" the shooting; (7) Christian requested an attorney and all questioning, perforce, ceased; (8) Christian was taken into custody; (9) other officers commenced "processing" the crime scene", i.e., obtaining physical evidence; (10) that the trajectory of a bullet indicated that it had gone through the wall into the bedroom; (11) that upon entry into the bedroom, the officers discovered in plain view substantial quantities of

drugs and drug paraphernalia; (12) that the officers immediately contacted the prosecutor's office in order to obtain a search warrant; (13) that in processing the warrant it became known to the law enforcement officials, in the first instance, that respondent rather than Christian leased the apartment.

It is simply undisputed that the officers were at all pertinent times proceeding upon the good faith belief that Christian occupied the apartment and thus had authority to consent to the ensuing search. While the circuit court below went to extraordinary lengths to avoid the clear issue presented, the fact remains that the officers had every objective good faith reason to believe that Christian had the authority to authorize entry into the apartment. The officers most assuredly had the requisite probable cause upon which a search warrant could have been obtained and, faced with the same set of circumstances, any officer [and perhaps many constitutional scholars] would have acted precisely as did the police officials herein.

The respondent herein goes free not because "the constable blundered" in any realistic scene but, rather, because an *ad hoc* and hyper-technical review of the facts has been found wanting years later by a reviewing court. To state that the ruling of the court below will deter "police misconduct" is nothing short of sheer sophistry.

To mandate application of the exclusionary rule to facts such as those presented in the instant case is to wholly convolute the very underpinning of the doctrine itself. While many advocates of the good faith exception to the rule have espoused its benefits, perhaps the most succient statement is that of the Fifth Circuit in **United States v. Williams**, *supra*, wherein the majority of the *en banc* court stated:

> Predictably, it will be argued that today's decision undercuts the fourth amendment. Not so; it concerns only the exclusionary rule, one device-but not the sole one-for enforcing the amendment, and a device that is already far from co-extensive with the amendment itself. As for the exclusionary rule, insofar as we restrict its application, we do so only to conform that to its underlying purpose: to deter unreasonable or bad-faith police conduct.
>
> Where the reason for a rule ceases, the rule should also cease-a familiar maxim carrying special force here. For here the cost of applying the rule is one paid in coin minted from the very core of our factfinding process, the cost of holding trials at which the truth is deliberately and knowingly suppressed and witnesses, in contravention of their oaths, are forbidden to tell the whole truth and censured if they do. This is a high price indeed and one that ought never be paid where, in reason, no deterrence is called for and none can in fact be had. Such a continued wooden application of the rule beyond its proper ambit to situations that its purposes cannot serve bids fair to destroy the rule entirely in the long run. *Id.* at 847.

The instant case presents an ideal vehicle for this Court to fully consider whether there should exist a good faith exception to the judicially created exclusionary rule. The courts and legislatures of both the federal and

state governments await guidance from this Court. As such, certiorari should be granted to resolve this issue of national importance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the requisite number of copies of the foregoing Petition for Writ of Certiorari have been served on respondent, Joseph Riley, by forwarding such copies through the office of his counsel, John F. Potts, 4334 West Central Avenue, Suite 231, Toledo, Ohio 43615, bv United States Mail, postpaid, this _____ day of June, 1982. I further certify that all parties required to be served have been so served. Respondent's address is c/o Mary Riley, Route 3, Paulding, Ohio 45879.

_____

DAIN N. DE VENY
Assistant Attorney General